

Message Text

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ACTION EA-14

INFO OCT-01 NEA-10 ISO-00 SPC-03 AID-20 EB-11 NSC-10

RSC-01 CIEP-02 TRSE-00 SS-20 STR-08 OMB-01 CEA-02

CIAE-00 COME-00 FRB-02 INR-10 NSAE-00 XMB-07 OPIC-12

LAB-06 SIL-01 L-03 H-03 PM-07 DODE-00 PA-04 USIA-15

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INFO AMEMBASSY BANGKOK

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AMEMBASSY JAKARTA

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TAGS: ENRG BM

SUBJECT: BURMESE OFFSHORE OIL NEGOTIATIONS IN FINAL STAGE

SUMMARY: MYANMA OIL CORPORATION IS STILL STUDYING REVISED PROPOSALS OF 19 FINALISTS FOR OFFSHORE OIL EXPLORATION SUBMITTED DECEMBER 8. EARLIER MOC DISCUSSED TAXATION, LEGAL, AND ADMINISTRATIVE DETAILS OF PLANNED PRODUCTION-SHARING ARRANGEMENTS WITH REPRESENTATIVES OF COMPANIES. FINAL CHOICE OF CONTRACTORS HOPED FOR ALTER PART OF JANUARY. MOST US COMPANIES SEEM PLEASED WITH CAPACITIES OF MOC NEGOTIATORS AND GENERALLY SATISFIED WITH BURMESE TERMS AND CONDITIONS, THOUGH STILL SOMEWHAT CONCERNED OVER SOME DETAILS OF CONTRACTS. MOC CLAIMS GENERALLY MORE FAVORABLE TERMS IN REVISED OFFERS. END SUMMARY.

1. THE 19 OIL COMPANIES SELECTED FOR SECOND ROUND OF NEGOTIATIONS

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ON BURMESE OFFSHORE OIL EXPLORATION SUBMITTED THEIR REVISED PROPOSALS TO MOC DECEMBER 8.0 DURING THE TWO PREVIOUS AND FOLLOWING WEEKS, MOST OF THE COMPANIES HAD DISCUSSED LEGAL, TAX, AND ADMINISTRATIVE ASPECTS OF THE PLANNED AGREEMENTS WITH MOC. AT

MOC'S REQUEST, MOST COMPANIES HAD NO CONTACT WITH OTHER AGENCIES OF GUB; ON MOST MATTERS MOC INTENDS TO ACT AS INTERMEDIARY.

2. TIMETABLE FOR FURTHER PROCEEDINGS NOW APPEARS TO BE MORE OR LESS AS FOLLOWS: MOC WILL REACH DECISION ON SUCCESSFUL BIDDERS, AND HOPES TO OBTAIN GUB CABINET APPROVAL -- I.E., CHAIRMAN NE WIN'S APPROVAL--SOME TIME BEFORE LEADERSHIP BECOMES PREOCCUPIED WITH ELECTIONS WHICH BEGIN JAN 27. OTHERWISE GUB APPROVAL MAY NOT BE FORTHCOMING TILL AFTER FEB 10. SUCCESSFUL BIDDERS WILL THEN BE SUMMONED BACK TO SIGN CONTRACTS. NO FURTHER SUBSTANTIVE NEGOTIATIONS EXPECTED AT THAT POINT BUT SOME FURTHER DISCUSSIONS WILL BE NEEDED ON ADMINISTRATIVE MATTERS BEFORE COMPLETING CONTRACTS IN FEBRUARY. COMPLETED CONTRACTS WILL THEN BE PRESENTED AS FAITS ACCOMPLIS TO REORGANIZED GUB TAKING OFFICE MARCH 2.

3. MOC MANAGING DIRECTOR DR. AUNG KHIN SAID JANUARY 3 HE STILL ANTICIPATES APPROXIMATELY SEVEN CONTRACTORS WILL BE SELECTED, AND THAT ALL 25 OFFSHORE BLOCKS WILL BE ASSIGNED, POSSIBLY WITH FEW MONTHS' DELAY IN SIGNING CONTRACTS ON SOME. ONE OR TWO COMPANIES HAD RECEIVED IMPRESSION DURING SECOND ROUND NEGOTIATIONS THAT MOC MIGHT WITHHOLD SOME BLOCKS AT PRESENT, WITH IDEA THEY MIGHT BE MORE VALUABLE IN A SECOND SERIES OF CONTRACT NEGOTIATIONS IF AND WHEN OIL IS FOUND.

4. US COMPANIES WITH WHOM WE HAVE BEEN IN CONTACT APPEAR GENERALLY SATISFIED WITH MOC'S TERMS, AND IMPRESSED BY ABILITY AND GRASP OF SUBJECT EXHIBITED BY MOC NEGOTIATORS HEADED BY AUNG KHIN. SEVERAL PROBLEMS OF DETAIL REMAIN TO BE RESOLVED, BUT GENERAL FEELING OF US FIRMS SEEMS TO BE THAT THEY CAN LIVE WITH RESULTS EVEN IF THEIR PREFERENCES ARE NOT COMPLETELY MET. SOME OF THESE POINTS ARE DESCRIBED IN PARAS 5 THROUGH 11 BELOW.

5. COMPANY LAWYERS ARE GENERALLY UNEASY OVER LEGAL BASIS FOR MOC TO CONCLUDE PRODUCTION-SHARING CONTRACTS WITH FOREIGN COMPANIES, IN VIEW OF A VOWAL BOTH IN 1947 CONSTITUTION AND IN NEW ONE THAT MINERAL RESOURCES ARE PROPERTY OF STATE. MOC'S AUTHORITY RESTS ON REVOLUTIONARY COUNCIL NOTIFICATION, COINED IN GENERAL TERMS, LIMITED OFFICIAL USE
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WHICH CREATED MOC AS CORPORATE ENTITY AND GAVE IT RIGHT TO EXPLOIT BURMESE PETROLEUM. MOC HAS REJECTED SUGGESTIONS THAT *HIS NOTIFICATION BE AMENDED TO MAKE ITS AUTHORITY MORE EXPLICIT, BUT HAS INDICATED IT COULD PROVIDE OPINION OF ATTORNEY GENERAL UPHOLDING ITS AUTHORITY TO ENTER INTO PRODUCTION-SHARING CONTRACTS. IN ADDITION, AT LEAST ONE COMPANY HAS BEEN GIVEN TO UNDERSTAND THAT THE CONTRACTS FINALLY NEGOTIATED WILL BE GIVEN FORCE OF LAW BY SOME FORM OF OFFICIAL NOTIFICATION.

6. MOC AND GUB ARE PREPARED TO ADJUST BURMESE TAX LEGISLATION TO SATISFY COMPANIES' REQUIREMENTS, BUT MUCH DETAILED DRAFTING REMAINS TO BE DONE. IT IS IN THIS AREA THAT COMPANY LAWYERS ARE PARTICU-

LARLY UNEASY ABOUT LACK OF ACCESS TO GUB TAX SPECIALISTS, SINCE THERE IS SUCH A PAUCITY OF INFORMATION ABOUT BURMESE TAX LAW AND PRACTICE. RATES CAN BE RATHER EASILY AMENDED, BUT MANY OTHER DETAILED ADJUSTMENTS WILL BE NECESSARY. FOR EXAMPLE, TAX YEARS (CALENDAR YEARS) USED BY US COMPANIES DO NOT FIT BURMESE FISCAL YEARS. INCOME TAX IS LEVIED (AT PRESENT, AT CONFISCATORY RATES) ON FIVE PERCENT OF OUTWARD FREIGHT EARNINGS OF SHIPS, AND THIS WOULD SEEM TO APPLY TO TANKERS PICKING UP PETROLEUM CARGOES.

7. ON THE OTHER HAND, COMPANIES SEEM GENERALLY TO FEEL THEY CAN LIVE WITH BASIC STRUCTURE OF BURMESE TAX LAW. MOC AND GUB FOR THEIR PART ARE RELUCTANT TO HAVE LEGISLATION CONSPICUOUSLY FAVORING OIL INDUSTRY ALONE, AND HOPE THAT MOST IF NOT ALL CHANGES CAN BE COUCHED IN TERMS APPLICABLE TO OTHER FOREIGN ECONOMIC PARTICIPATION AGREEMENTS, AND PERHAPS ALSO TO LOCAL BUSINESS.

8. ONE COMPANY EXPRESSED SOME DISAPPOINTMENT AT MOC POSITION ON ANY NATURAL GAS FINDS, WHICH IS TO TREAT GAS SUBSTANTIALLY THE SAME AS PETROLEUM UP TO POINT AT WHICH IT REACHES ON-SHORE PROCESSING PLANT. IN THIS COMPANY'S OPINION, UNDER SUCH AN ARRANGEMENT IT WILL NOT BE COMMERCIALY FEASIBLE TO EXPLOIT ANY MAJOR GAS FINDS IN BURMESE WATERS. MOC HAS AGREED TO REEXAMINE ITS POSITION, WHICH IN ANY CASE MIGHT CHANGE IF AND WHEN GAS IS FOUND. COMMENT: ALTHOUGH KNOWLEDGEABLE COMPANY REPRESENTATIVES HAVE INDICATED THERE IS GOOD POSSIBILITY FOR GAS IN LIEU OF OR IN ADDITION TO OIL, BURMESE THINKING HAS BEEN FOCUSED ALMOST EXCLUSIVELY ON LATTER. WE DOUBT IF MOC OR GUB HAS THOUGHT SERIOUSLY ABOUT POSSIBILITY OF MAJOR NATURAL GAS DEPOSITS BEING EXPLOITED.

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9. MOC IS INSISTING THAT CUSTOMS DUTIES BE PAID ON PERSONAL AND HOUSEHOLD EFFECTS BROUGHT IN BY COMPANY PERSONNEL, AND COMPANIES APPARENTLY ARE ACQUIESCING IN THIS POSITION.

10. AS PREVIOUSLY REPORTED, MOC IS PRESSING FOR EARLIEST POSSIBLE START AND FAST WORK ON OFFSHORE EXPLORATION. WHILE COMPANIES ARE WILLING TO COMPLY, SOME ARE CONCERNED OVER POSSIBLE DELAYS CAUSED BY GUB ADMINISTRATIVE REQUIREMENTS--CUSTOMS CLEARANCE OF EQUIPMENT, VISAS, ETC. MOC PLANS TO ACT AS SERVICE AGENCY AND GO-BETWEEN FOR COMPANIES IN MOST DEALINGS WITH OTHER GUB AGENCIES, AND IN THIS WAY HOPES CUT THROUGH RED TAPE QUICKLY.

11. REQUIREMENT THAT PETROLEUM SALES PROCEEDS BE DEPOSITED IN UNION OF BURMA BANK BEFORE SHARING BETWEEN MOC AND COMPANIES IS ALSO A SOURCE OF CONCERN. INDICATIONS ARE THAT THIS REQUIREMENT CAN BE FULFILLED WITHOUT SUBJECTING COMPANIES TO COMPLEXITIES AND RISKS OF BURMESE EXCHANGE CONTROL, POSSIBLY BY USE OF NON-RESIDENT ACCOUNTS NOT SUBJECT TO EXCHANGE CONTROL, OR BY PLACING PROCEEDS IN UNION BANK'S ACCOUNTS WITH OVERSEAS CORRESPONDENT BANKS.

12. WE HAVE NO INDICATION AS YET THAT GUB HAS RESOLVED QUESTION OF OFFSHORE BOUNDARY WITH BANGLADESH. BENGALIEE EMBOFF SAID IN MID-DECEMBER HIS AMBASSADOR HAD BEEN CALLED TO FOREIGN MINISTRY TO BE NOTIFIED FORMALLY OF BURMESE PLANS TO CONCLUDE OFFSHORE PRODUCTION-SHARING CONTRACTS, BUT FEW DETAILS PROVIDED AND APPARENTLY NO DISCUSSION OF BOUNDARY. ACCORDING TO AUNG KHIN, THERE HAVE BEEN NO CONTACTS BETWEEN MOC AND GOBD PETROLEUM OFFICIALS.

13. MOC MEANWHILE CONTINUES OWN OFFSHORE DRILLING PROGRAM, STILL WITHOUT SUCCESS, WE HAVE HAD FIRST REPORT, STILL UNCONFIRMED, THAT TOP LEVELS GUB HAVE BEGUN PRIVATELY TO EXPRESS SOME IMPATIENCE WITH MOC MANAGEMENT AND WITH AUNG KHIN PERSONALLY OVER WHAT IS REGARDED AS LACK OF EXPERTISE IN FINDING OFFSHORE OIL.

14. PARAS 1-11 ABOVE MAY BE DISCUSSED WITH INTERESTED US COMPANIES.
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